THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION N0.18 of 1996

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DATED: 03-08-2005

A. Surender Reddy (Died) & 3 others.

..... PETITIONERS

AND

The Collector, Medak District
Sangareddy & two others.

.....RESPONDENTS

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ORAL ORDER:

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First petitioner filed this petition seeking a direction to the respondents not to dispossess him from Ac.1.00 in Sy.No.688/18 of Yousufpet village, alleging that the said land, along with other lands, was allotted to his share in a partition and that respondents, without any right or authority, are trying to interfere with his possession on the said one acre of land.

2. Subsequent to the filing of the petition 1st petitioner died and so his legal representatives came on record. 2nd petitioner is the widow of 1st petitioner.

3. 3rd respondent-Mandal Revenue Officer filed his counter affidavit, on behalf of respondents, alleging that Ac.1.00 of land in Sy.No.688/18 of Yousufpet village, in respect of which 1st petitioner filed this petition, was assigned to the paternal uncle of the 1st petitioner by name Narayan Reddy who could secure such assignment suppressing the factum of his owning other lands and that on coming to know that he was not eligible for grant of patta, the patta granted in his favour was cancelled in case No.C2/5/90, dated 15-02-1995, after issuing a show cause notice to him and thus occupation of the aforesaid one acre of land by the 1st petitioner is unauthorized and so he is not entitled to the relief sought.

4. 2nd petitioner filed her reply affidavit *inter alia* contending that their family has been enjoying the aforesaid one acre from the date of partition that took place between the family members and that she is not aware of the other details.

5. Heard both sides. The file produced by the learned Government Pleader shows that on a petition filed by a number of villagers alleging that Narayan Reddy, who is the paternal uncle of the 1st petitioner, and who was the Ex-Sarpanch of the village, managed to obtain patta for the aforesaid Ac.1.00 in Sy.No.688/18, a show cause notice, as to why the assignment in his favour in respect of Ac.1.00 of land should not be cancelled, was issued by the Joint Collector to the said Narayan Reddy after making a preliminary enquiry. The said Narayan Reddy appeared through a counsel and failed to file his explanation to the show cause notice, though the matter underwent several adjournments, and finally when his counsel reported 'no instructions' the Joint Collector, by his order in Case No.C2/5/90, dated 15-02-1995, cancelled the patta that was issued to Narayan Reddy in 1969-1970 on the ground that he was owing about Ac.23.31 gts of wet land and Ac.5.38 gts of dry land and by the date of the assignment and hence was not eligible for assignment of the land gave a direction to the 3rd respondent to take possession of the said land.

6. The partition alleged by the 1st petitioner is not evidenced by any registered partition deed. Obviously with a view to get over the order impugned in the petition, and the order of the Joint Collector cancelling the patta, 1st petitioner might have pleaded a partition between him and his uncles. Partition or no partition, when the assignment in favour of Narayan Reddy is cancelled, the fact that the land was allotted to the share of the 1st petitioner during the partition can be of no help to the petitioners to retain their possession, since assigned land, *per se* would not become the joint family property. Thus occupation of the above one acre of land by petitioners is not legal, and so petitioners are not entitled to any relief from this Court.

7. Since the file produced by the Government Pleader does not disclose that possession was taken over from Narayan Reddy or the petitioner, this Wit Petition is disposed of with a direction to the respondents not to dispossess the petitioners,

except in accordance with due process of law. In other words, respondents can evict the petitioners by taking recourse to due process of law. The Writ Petition is disposed of accordingly. No costs.

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(C.Y.SOMAYAJULU,J)

3rd August, 2005.

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